

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER FLOYD,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of
Social Security,

Defendant.

Case No. C03-5418FDB

ORDER DENYING RULE 59(e)
MOTION TO ALTER AND AMEND
(MOTION FOR
RECONSIDERATION)

Plaintiff brings a motion to Alter and Amend pursuant to Fed. R. Civ. P. 59(e) (Motion to Alter or Amend Judgment). As there is no judgment entered on the order appealed from [Dkt. # 34], the Court will treat the motion as one for reconsideration under the Local Rules CR 7(h).

The statement made by the Ninth Circuit in remanding this case for reconsideration by the Administrative Law Judge (ALJ) is set forth in Plaintiff's Reply brief [Dkt. 3# 33]. Among other things, the Ninth Circuit said: "The ALJ understood Dr. Lenza's reference to 'negative symptomology' to refer to Floyd's denial of positive psychotic symptoms, such as hallucinations, or to malingering. However, Dr. Lenza's use of the term 'negative symptomology' referred to Floyd's loss of personality traits, not his denial of symptoms." The Court then concluded:

1 Accordingly, we remand this case to the ALJ to determine whether to credit the
2 testimony of Dr. Lenza based on a proper understanding of the term “negative
3 symptomology.” We deny Floyd’s request for us to remand to the ALJ directing a
4 finding of disability. Instead, on remand the ALJ may credit or reject Dr. Lenza’s
5 opinion for valid reasons, but must do so with a correct understanding of the meaning
6 of “negative symptomology.” Because the ALJ also discounted the evidence from
7 Kitsap Mental Health because of the ALJ’s misunderstanding of the term “negative
8 symptomology,” on remand the ALJ shall reevaluate this evidence as well.


9 (Plaintiff’s Reply, p. 3; *Floyd v. Barnhart*, No. 04-35730 (9th Cir. April 26, 2006.) The Ninth
10 Circuit also noted that

11 The Government, in its oral argument before us, has conceded that the ALJ
12 improperly interpreted Dr. Lenza’s reference to negative symptoms, but the
13 Government argues that this error was harmless because the ALJ focused on Floyd’s
14 functional limitations, not Dr. Lenza’s diagnosis. ... However, the ALJ did not just
15 dismiss Dr. Lenza’s diagnosis, but also his opinion of Floyd’s functional limitations.

16 *Id.* This Court concluded that the Commissioner was substantially justified on the remand issue
17 despite the ALJ’s misunderstanding of the term and in view of all the evidence, a conclusion that
18 Plaintiff argues is too broad in the face of the Ninth Circuit’s ruling. But the Commissioner could
19 reasonably argue that the ALJ’s misunderstanding of the term made no difference in the outcome.
20 That the Ninth Circuit decided that if the ALJ has the correct understanding that he might come to
21 another conclusion, does not mandate that this Court determine that the Commissioner’s position
22 was not substantially justified or reasonable.

23 ACCORDINGLY, IT IS ORDERED: Plaintiff’s Rule 59(3) Motion To Alter And Amend
24 [Dkt. # 36], treated as a motion for reconsideration, is DENIED.

25 DATED this 17th day of October, 2006.

26 
FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE